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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

AMY CHAMBERLIN, in the public interest,

Plaintiff,

v.

MARTH WOOD SHAVING SUPPLY, INC., a
Wisconsin corporation; and DOES 1 through
500, inclusive,

Defendant.

Case No.

18928331

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

[Cal. Health and Safety Code Sec.
25249.6, *et seq.*]

BY FAX

1 Amy Chamberlin, in the public interest, based on information and belief and investigation
2 of counsel, except for information based on knowledge, hereby makes the following allegations.

3 **INTRODUCTION**

4 1. This Complaint seeks to remedy Defendant's continuing failure to adequately warn
5 individuals in California that they are being exposed to Wood Dust, a chemical known to the State
6 of California to cause cancer. Such exposures have occurred, and continue to occur, through the
7 distribution, sale, and consumption of "Marth Wood Shaving Supply Quality Animal Bedding"
8 (the "Product"). On information and belief, the Product is available to consumers in California
9 through a multitude of retail channels, including, without limitation: (a) via the internet through
10 the primary distributor's website; and (b) via the internet through third-party retail websites.
11 Consumers are exposed to Wood Dust when they use the product as intended by the manufacturer.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.6, *et seq.*, it is
13 unlawful for businesses to knowingly and intentionally expose individuals in California to
14 chemicals known to the State to cause cancer without providing clear and reasonable warnings to
15 individuals prior to their exposure. Defendant sells and distributes a product contaminated with
16 significant quantities of Wood Dust into the California marketplace, exposing consumers of the
17 Product to Wood Dust.

18 3. Despite the fact that Defendant exposes consumers to Wood Dust, during the
19 relevant period, Defendant provided no warning about the carcinogenetic hazards associated with
20 Wood Dust exposure. Defendant's conduct thus violates the warning provision of Proposition 65,
21 Health & Safety Code § 25249.5.

22 **PARTIES**

23 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &
24 Safety Code § 25249.7(d).

25 5. Defendant MARTH WOOD SHAVING SUPPLY, INC. ("Defendant") is a person
26 in the course of doing business within the meaning of Health & Safety Code § 25249.11.
27 Defendant distributes and/or sells the Product for sale and use in California.
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1 6. The true names of DOES 1 through 500 are unknown to Plaintiff at this time. When
2 their identities are ascertained, the Complaint shall be amended to reflect their true names.

3 **JURISDICTION AND VENUE**

4 7. The Court has jurisdiction pursuant to Health & Safety Code § 25249.7, which
5 allows enforcement in any court of competent jurisdiction, and pursuant to California Constitution
6 Article VI, Section 10, because this case is a cause not given by statute to other trial courts.

7 8. This Court has jurisdiction over Defendant as business a entity that does sufficient
8 business, has sufficient minimum contacts in California, or otherwise intentionally avails itself of
9 the California marketplace through the sale, marketing or use of the Product in California and/or
10 by having such other contacts with California so as to render the exercise of jurisdiction over them
11 by the California courts consistent with traditional notions of fair play and substantial justice.

12 9. Venue is proper in Alameda County Superior Court because one or more of the
13 violations arise in the County of Alameda, and Defendant has designated no principal office within
14 the State of California.

15 **BACKGROUND**

16 10. The People of the State of California have declared by initiative under Proposition
17 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
18 other reproductive harm." Proposition 65 § 1(b).

19 11. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed
20 by the State of California as known to cause cancer, birth defects or other reproductive harm above
21 certain levels without a "clear and reasonable warning" unless the business responsible for the
22 exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6
23 states, in pertinent part:

24 No person in the course of doing business shall knowingly and intentionally expose any
25 individual to a chemical known in the state to cause cancer or reproductive toxicity without
26 first giving clear and reasonable warning to such individual...

27 12. On December 18, 2009, the State of California officially listed Wood Dust as a
28 substance known to cause cancer. On December 18, 2010, one year after it was listed as a

1 substance known to cause cancer, Wood Dust became subject to the clear and reasonable warning
2 requirement regarding carcinogens under Proposition 65. 27 C.C.R. 27001(c); Health & Safety
3 Code § 25249.10(b).

4 13. Defendant's Product contains Wood Dust such that consumers using the Product
5 are exposed to Wood Dust. The primary route of exposure for the violations is through inhalation.
6 These exposures occur everywhere throughout California where the Products are used.

7 14. No clear and reasonable warning is provided with the Product regarding the
8 carcinogenic hazards of Wood Dust.

9 15. Any person acting in the public interest has standing to enforce violations of
10 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
11 60-day Notice of Violation and public enforcers are not diligently prosecuting the action within
12 such time. Health & Safety Code § 25249.7(d).

13 16. More than sixty days prior to naming Defendant in this lawsuit, Plaintiff provided
14 a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District
15 Attorneys of every county in California, the City Attorneys of every California city with a
16 population greater than 750,000 and to the named Defendant. In compliance with Health & Safety
17 Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following information: (1)
18 the name and address of each violator; (2) the statute violated; (3) the time period during which
19 the violations occurred; (4) the specific descriptions of the violations, including (a) the routes of
20 exposure to Wood Dust from the product and (b) the specific type of Product sold and used in
21 violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is
22 the subject of the violation described in the Notice.

23 17. Plaintiff also sent a Certificate of Merit for the Notice to the California Attorney
24 General, the District Attorneys of every county in California, the City Attorneys of every
25 California city with a population greater than 750,000 and to the named Defendant. In compliance
26 with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, the Certificate certified that
27 Plaintiff's counsel: (1) consulted with one or more persons with relevant and appropriate
28 experience or expertise who reviewed fact, studies or other data regarding the exposures to Wood

1 Dust alleged in the Notice; and (2) based on the information through such consultations, believes
2 that there is a reasonable and meritorious case for a citizen enforcement action based on the facts
3 alleged in the Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §
4 3102, the Certificate served on the Attorney General included factual information—provided on a
5 confidential basis—sufficient to establish the basis for the Certificate, including the identity of the
6 person(s) consulted by Plaintiff's counsel and the facts, studies or other data reviewed by such
7 persons.

8 18. None of the public prosecutors with the authority to prosecute violations of
9 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against Defendant
10 under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in Plaintiff's Notice.

11 19. Defendant both knows and intends that individuals in California will use the
12 Product, thus exposing them to Wood Dust.

13 20. Under Proposition 65, an exposure is "knowing" where the party responsible for
14 such exposure has:

15 Knowledge of the fact that a[n]...exposure to a chemical listed pursuant to [Health &
16 Safety Code § 25249.8(a)] is occurring. No knowledge that the...exposure is unlawful is
17 required.

18 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.* Final
19 Statement of Reasons Revised (November 4, 1998) (pursuant to former 22 C.C.R. Division 2, §
20 12201).

21 21. Defendant has further been informed of the Wood Dust in the Product by the 60-
22 Day Notice of Violation and accompanying Certificate of Merit served on them.

23 22. Defendant further has, throughout the operative period, had knowledge its Product
24 contains Wood Dust.

25 23. As an entity that distributes and/or sells the Product for use in the California
26 marketplace, Defendant knows or should know that the Product contains Wood Dust and that
27 individuals who use the Product will be exposed to Wood Dust. The Wood Dust exposures to
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1 consumers who consume the Product are a natural and foreseeable consequence of Defendant's
2 placing the Product into the stream of commerce.

3 24. Nevertheless, Defendant continues to expose consumers to Wood Dust without
4 prior clear and reasonable warnings regarding the carcinogenetic hazards of Wood Dust.

5 25. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior
6 to filing this Complaint.

7 26. Any person "violating or threatening to violate" Proposition 65 may be enjoined in
8 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is
9 defined to mean "to create a condition in which there is a substantial probability that a violation
10 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not
11 to exceed \$2,500 per day for each violation of Proposition 65.

12 **CAUSE OF ACTION**

13 **(Violations of the Health & Safety Code § 25249.6)**

14 27. Plaintiff restates and realleges paragraphs 1-26 as though fully set forth herein.

15 28. By placing the Product into the stream of commerce, Defendant is a person in the
16 course of doing business within the meaning of Health & Safety Code § 25249.11.

17 29. Wood Dust is a chemical listed by the State of California as known to cause cancer.

18 30. Defendant knows that average use of the Product will expose users to the Product
19 to Wood Dust. Defendant knows the that the average use of the Product will expose users of the
20 Product to Wood Dust. Defendant intends that the Product be used in a manner that results in
21 exposures to Wood Dust from the Product.


22 31. Defendant has failed to provide clear and reasonable warnings regarding the
23 carcinogenic hazards of Wood Dust to users of the Product.

24 32. By committing the acts alleged above, Defendant has at times relevant to this
25 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Wood
26 Dust without first giving clear and reasonable warnings to such individuals regarding the
27 carcinogenetic hazards of Wood Dust.
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1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against Defendant of up to \$2,500 per day for each violation of Proposition 65 occurring during or after the statutory period;
2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendant from offering the Product for sale in California without either reformulating the Product such that no Proposition 65 warnings are required or providing clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to take action to stop ongoing unwarranted exposures to Wood Dust resulting from use of the Product, as Plaintiff shall specify in further application to the Court;
4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

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By: 
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Attorneys for Plaintiff